

MAINE STATE HARNESS RACING COMMISSION  
MINUTES OF MEETING  
APRIL 14, 2016

Conference Room, Gambling Control Board  
Department of Public Safety  
45 Commerce Drive, Augusta, ME

Commission Members Present: William Varney, Chair, Gary Reed, William McFarland, Michael Graham and Alexander Willette

Commission Members Absent: None.

Staff Members Present: Ron Guay, AAG, Henry Jennings, Carol Gauthier, Betty Farr, Ralph Canney, Jaime Wood and Miles Greenleaf.

**1. Call the Meeting to Order and Introductions:** William Varney, Chair

**2. Overview of Commission Responsibilities, Adjudicatory Hearings and Appeals Process**

AAG, Guay addressed the Commissioners regarding any legal advice they may have for whether they should participate in matters in terms of potential bias. He could help them through that analysis or maybe they have questions regarding the statute or law. He stated that the best place to see what their responsibilities are is in the statute. If you look at 8 MRS, Section 263, A, B and C, it outlines the various responsibilities of the three parties that make this system work. The Commissioners are regarded as a panel of judges. One type of hearing is when cases come to the Commission on an appeal from the racetrack; they are denovo cases which tend to be longer. What that means is that you would not just look at what the judge says. You would hear all the evidence that is presented at the hearing. The next type of hearing you would hear is the most common is the prohibited substance rule. Your rules define what a prohibited substance is. AAG, Guay stated to the Commissioners that they should not investigate what they hear on their own because they need not to put themselves anywhere near a controversy. When you look at the rules, and if the rule is not consistent with the statute the statute trumps the rule. It is not a good idea to change your rules very often. But if you do rulemaking around substances, the horsemen and the veterinarians need time to understand how to get into compliance with that. Then the industry is trying to get into compliance with these changes. The Chair has the opportunity to be the hearing office. AAG, Guay stated that the only time he cannot give the Commissioners advice is when he is prosecuting a case.

**3. Procedural Discussion Regarding Motions Relating to the Consolidated Cobalt Case**

AAG, Guay stated that there are 4 individuals with 32 counts. They consolidated the Cobalt cases instead of prosecuting 32 cases up until the date of the first hearing. Under the Maine Administrative Procedure Act, a decision is rendered in writing or stated into the record with degree of particularity for people to understand what has happened. Commissioners decided on the violations and they assessed penalties. Because there is more than one person making a decision, that decision needs to be reduced to writing. The people who made the decision then look at the writing and say yes that's what they meant and yes that was their findings and yes that's the penalties they want. Those people would vote on the decision and order and typically the Chair would sign it, but because there are only two Commissioners that were present. They will be signing the

decision and order. At midnight of the next day, the decision and order becomes effective. Once they receive the green card, there will be an appeal to Superior Court. The decision and order will be available at April 26, 2016. They can appeal but they are still suspended. There will be a motion filed for a stay. The Superior Court will not grant a motion for a stay. In addition the parties have filed a motion to reconsider. AAG, Guay stated that his job is to make sure that we are doing it properly because if we don't do it properly, that is grounds for an appeal. Superior Court could say Harness Racing Commission you did it wrong and they could throw these cases out. What reconsideration is, the parties are going to be asking this Commission to take a look at the decision and order which 2 of the Commissioners will be signing it and the Commission will be approving it on April 26, 2016. Then the licensees will ask, you've got this decision and order can you take a look at it because of this. Then you will have to make a ruling on it. In the petition for reconsideration, you will be asked for further findings. In this case, the Commissioners made a decision on one day. The lawyers said the Commissioners didn't give them information on the time frame to pay the fines. They waived notice and the next day the Commissioners met and said ok we will allow people 5 months to pay these fines. This was not part of the original decision but it was made part of the decision after. On April 26, 2016, you will be hearing the petition for reconsideration and the driving privileges of one of the licensees for a driver's license.

**4. Discussion of the Department's Position with Respect to Enforcement Policies**

Mr. Jennings stated that he came into this position in August 2015. He stated that he is looking at the Notice of Positive Test results and who should receive the letter. He stated that the Commission members should not receive this letter because it is part of the evidence in that case. The rules that are currently in place should be used. Mr. Jennings stated that the multiple positive test violators stated that they didn't get the letter in a timely matter. He also stated that it takes 3 weeks to get lab results because the labs get busy. The contract states that they have 10 business days to report the results. The purpose of collecting these blood samples is not to provide a service to the horsemen to help them understand what the best withdrawal policy is. That is not why we do it. The purpose of collecting these blood samples is to enforce the law. If licensees need help trying to figure out what the proper withdrawal time is for drugs, which is something they need to do on their own. AAG, Guay stated that the Commissioners need to come to a conclusion on their own. If you have multiples cases coming up, the Commissioners could have that discussion before the hearing to provide guidance to the hearing office to how you want to proceed.

**5. Review Proposed 2016 Judges List**

Commissioner Varney asked for the review of the proposed judges list. Mr. Greenleaf stated to the Commission to look at Chapter 3, Section 1 rule. He presented the list of proposed judges. Commissioner Varney asked if they are to approve the list as a whole or individually. Mr. Greenleaf stated that in the past the list was approved pending the license approval. Commissioner Varney asked if these people are licensed. Mr. Canney stated that these individuals don't always get licensed unless they are going to work at an association. AAG, Guay stated that the law says that the Commission shall provide a list of approved presiding and associate judges on an annual basis to the racing associations. All presiding and associate judges to be considered for approval must attend a Commission approved educational seminar consisting of at least 4 hours every 2 years. When you approve the list, you need proof they attended the educational seminars. Commissioner Varney asked for any discussion. Commissioner McFarland agreed with

AAG, Guay. Commissioner McFarland made a motion to approve the judges as Charles Malia, Frank Woodbury and Edward Kelleher for Scarborough Downs meet for calendar year 2016. Commissioner Willette seconded. Vote 5-0.

**6. Overview of the Out-of-Competition Testing Process**

Commissioner Varney asked for the overview of the Out-Of-Competition testing process. Dr. Matzkin, department veterinarian, stated that they tested at the following venues located at Windsor, Sidney and West Gardiner. The people involved in the process are the veterinarian, state steward and staff members. The reason why we test on non-race days is the blood boosting drugs do not last very long in the horses system.

Commissioner McFarland asked how the reception has been so far. Dr. Matzkin stated that there hasn't been any problem. AAG, Guay stated that the statute says that it has to be a veterinarian to collect the samples. Mr. Jennings stated that the Commission had asked to collect more in 2016 than they did last year. Commissioner McFarland asked what the current department policy is with respect to the breath test. Mr. Greenleaf stated that the new swab test is different than last year. We are going with an instant oral test that provides results in 10 minutes and if found positive the presiding judge will be notified, and that individual will be taken off all duties for the day and asked to leave the paddock based on the track. He said they can come back and race the next day as long as they have a clean test result. All positives will be sent to the lab that we have contracted with. If confirmed, the individual will be notified and a hearing will be scheduled. Mr. Jennings stated that the department does not have the authority to prevent someone from racing based on a positive test but the racetrack does. Commissioner McFarland stated that last year there were a number of trainers and drivers that expressed a concern and it only makes sense from a safety standpoint.

**7. Other Business:**

Commissioner McFarland stated that maybe we could take care of some business with the representatives from Bangor regarding the judges being licensed for this year at Bangor. Mr. Hopkins stated that the judges are Presiding Judge, Frank Hall; Associate Judges are Pam Merrill, Ronald Merrill and Gordon Bowden. Mr. Greenleaf stated that they are all licensed and have completed the educational seminar. Commissioner McFarland made a motion to approve the 4 judges as stated above that have met the requirement of the MSHRC rules at the Bangor meet. Commissioner Willette seconded. Vote 5-0.

**8. Public Comment**

Commissioner Varney asked for public comment. Mr. Timmons stated that the Commissioners are faced with more challenges right now than ever before in the industry. The perception in the public right today, most of the things you have talked about, has been drug issues and that has not been received well. It gives us a bad name and makes it difficult to keep that perception. The reason people come to the fairs and come to racing is to see the competition and have fun. But when you see the drug issues at the top of the list you have a big challenge ahead of you. Mr. Timmons as president of Cumberland Fair also stated that he wanted to speak about the fairs. There are at least 5 or 6 fairs where they have made arrangements to allow them an extra \$9,000 each because they were running in the red for the past few years and are close to not racing and having a fair. There are 26 million people who attend those 26 fairs and to lose even one of those fairs is a problem. You need to enforce the rules to help them survive.

Dick Shiers addressed the Commission regarding the positive test that come into the office. When this is placed on the agenda for a hearing and these trainers postpone the

hearing. What constitutes a postponement? He stated that AAG, Guay said an inconvenience. Mr. Shiers also wanted to know who determines when the purse return is to be returned. He knows many people that have not received their purse money. He also stated that there are some horsemen who prefer not to race on illegal drugs. Mr. Shiers also stated that there are issues with paper trainers. People are putting horses in someone else's name when they are set down and they don't know where their horse is.

Commissioner Varney stated that some of the issues that Mr. Shiers had talked about will be addressed of this year.

Ms. Perkins stated that she did attend the judge's school and one thing she did get out of that school is the item of a head on camera for the stretch. She is requesting to have the Commission install a head on camera for the stretch. She also stated that the breeders have appointed an ADHOC Committee as a request by the Ag Committee and the Legal Veterans Affairs to get more horses for the Sire Stakes Committee. In January 2017 they will have to report back to the committees.

Mr. Sweeney stated that Scarborough Downs has had plenty of horses for racing.

Beginning in June, they have purchased a television package for commercials to run on WMTW to help with the attendance at the track.

AAG, Guay stated that he would like to make a point about the paper trainer. Chapter 7, Section 46.3C Duties of the trainer says, "the trainer shall be present in the paddock from the time his/her horse(s) enter the paddock until all of his or her horses have raced. A horse(s) will be scratch if the trainer is not in the paddock pursuant to this rule, unless the trainer has specific approval of the Presiding Judge to be absent from the paddock. The trainer must notify the presiding Judge of his absence and identify who will be responsible for the horse(s) scheduled to race at the track that day and provide necessary documentation to the Paddock Judge prior to the day's racing program". He also stated that if there is a trainer of record and they are not there and aware of where their horse is, than you should bring it to the attention of the judges.

## **9. Executive Director's Report**

Mr. Jennings stated that he would like to acknowledge the contributions of two commissioners, Barbara Dresser and Dirk Duncan for their dedication and commitment to the industry. Our office is moving from the Deering Building to the Marquardt Building on April 15, 2016. He also stated that they held the judges training on March 28, 2016. The officials from the USTA provided the training. He also stated that the staff is tracking any fines, purse returns and penalties that need to be paid or addressed. Dr. Matzkin and the contracted veterinarians and staff are working hard to do more out-of-competition testing. Mr. Jennings stated that the payments for sustaining fees and yearling nominations for the Sire Stakes Program are due by May 15, 2016. He also stated that we plan on holding two meetings a month until we have caught up on the hearings.

Commissioner McFarland stated that he did not know that the Commission staff was at Windsor Fairgrounds for the out-of-competition testing because he was there that day. Commissioner Reed made a motion to adjourn. Commissioner Willette seconded. Vote 5-0.

## **10. Schedule of Future Meetings**

April 26, 2016

## **11. Adjourn**

11:20 p.m.